

1 FELIPE ROCHA # K-94573

2 PRSP - D-9-213<sup>c</sup> SHV

3 P.O. BOX- 7500

4 CRESCENT CITY CAL

5 95532

FILED

08 JUL 25 PM 1:13

RICHARD W. HIERING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

6 IN PRO SE

7

8 IN THE UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10

11 FELIPE ROCHA # K-94573

PETITIONER

12 VS.

13 ROBERT A. MOREZ (WATROBN.)

14 RESPONDENT

15 } NO. C 07-3295 CRB PR.

16 } PETITIONER'S APPLICATION  
17 } FOR CERTIFICATE  
18 } OF APPEALABILITY  
19 } FROM THE DISTRICT  
20 } COURT, AND STATEMENT  
21 } OF REASONS IN  
22 } SUPPORT

## INTRODUCTION

20

21 PETITIONER FELIPE ROCHA # K-94573

22

REQUESTS THAT THE U.S. DISTRICT COURT

23

ISSUE A CERTIFICATE OF APPEALABILITY

24

(HEREAFTER "COA") PERMITTING

25

PETITIONER TO APPEAL FROM THE JUDGEMENT

26

ENTERED BY THE HONORABLE CHARLES

27

R. BREYER UNITED STATES DISTRICT

28

JUDGE ON July 7<sup>th</sup> 2008<sup>th</sup>.

(COA  
10/18)

1 DENYING THE PETITION FOR WRIT  
2 OF HABEAS CORPUS IN THE ABOVE  
3 ENTITLED MATTERED. CONCURRENTLY  
4 WITH THIS APPLICATION FOR COA.  
5 PETITIONER HAS FILED ATTORNEY NOTICE  
6 OF APPEAL.

7

8

9 ISSUES ON WHICH CERTIFICATE  
10 OF APPEALABILITY IS SOUGHT

11

12

CLAIM # 1

13

14 WHETHER THE DISTRICT COURT ERRED IN  
15 FAILING TO GRANT PETITIONERS  
16 EVIDENTIARY HEARING ON PETITIONERS  
17 CLAIM THAT COUNSEL'S FAILURE TO SEEK  
18 PITCHLESS DISCOVERY FOR THE WITNESS  
19 ON WHOM THE ENTIRE PROSECUTION CASE  
20 DEPENDED ON, FELL BELOW THE  
21 STANDARDS OF REASONABLY COMPETENT  
22 COUNSEL-

23

24

CLAIM 2#

25

26

27 WHETHER WITH REGARD TO PETITIONERS  
28 CLAIM THAT THE DISTRICT COURT  
29 ERRED AND ACTED CONTRARY TO

(COA)  
(2d15)

1 AND UNREASONABLY APPLIED CASE LAW  
2 TO ITS RESPONSE IGNORING CLEARLY  
3 ESTABLISHED FEDERAL LAW DECIDED BY  
4 UNITED STATES COURTS WHICH IN PERTINERS  
5 WRITTEN ARTICULATES HOW DENIAL OF  
6 PERTINERS MAROSEN MOTION WAS AN ABUSE  
7 OF DISCRETION, BECAUSE AS THE RECORD  
8 DID CAPTURE AS DID COUNSEL BY HIS OWN  
9 ADMISSIONS, COUNSEL WAS PERFORMING  
10 BELOW THE STANDARDS OF REASONABLY  
11 COMPETENT COUNSEL. AND BECAUSE AS  
12 PERTINERS WRITTEN CLEARLY SHOWS.  
13 THE RELATIONSHIP BETWEEN CLIENT AND  
14 COUNSEL WAS SO IRREVOCABLY IMPAIRED  
15 THAT INNFFECTIVE REPRESENTATION  
16 WAS LIKELY TO RESULT.

18 LEGAL STANDARDS FOR  
19 ISSUANCE OF COA.

20  
21 in the U.S. SUPREME COURT DECISION  
22 in MILLER-EL V. COCKREL 537 U.S. 322  
23 123 S.GT 1029 (2003) THE COURT  
24 CLARIFIED THE STANDARDS FOR  
25 ISSUANCE OF A COA:

26 .... A PRISONER SEEKING A COA  
27 NEED ONLY DEMONSTRATE A "SUBSTANTIAL"  
28 SHOWING OF THE DENIAL OF A CONSTITUTIONAL

1 right!" A petitioner satisfies this  
 2 standard by demonstrating that jurist  
 3 of reason could disagree with the  
 4 district court's resolution of his constitutional  
 5 claims or that jurists could conclude  
 6 the issue presented are adequate  
 7 to deserve encouragement to proceed  
 8 further.

9 *Id.* 123 S.Ct at 1034 citing *SLACK V.*  
 10 *McDANIEL* 529 U.S. 473, 484 (2000)  
 11 REDUCED TO ITS ESSENTIALS THE TEST IS MET  
 12 WHERE THE PETITIONER MAKES A SHOWING THAT  
 13 THE PETITION SHOULD HAVE BEEN RESOLVED IN  
 14 A DIFFERENT MANNER OR THAT THE ISSUES  
 15 PRESENTED WERE INADEQUATE TO DESERVE  
 16 ENCOURAGEMENT TO PROCEED FURTHER;  
 17 *Id.* AT 1039 citing *BAREFOOT V. ESTELLE*  
 18 463 U.S. 880 (1983) THIS MEANS THAT  
 19 THE PETITIONER DOES NOT HAVE TO PROVE  
 20 THAT THE DISTRICT COURT WAS NECESSARILY  
 21 "WRONG"- JUST THAT ITS RESOLUTION OF  
 22 THE CONSTITUTIONAL CLAIM IS "DEBATABLE."

23 WE DO NOT REQUIRE PETITIONER  
 24 TO PROVE BEFORE THE ISSUANCE OF A  
 25 COA THAT SOME JURIST WOULD GRANT  
 26 PETITION FOR HABEAS CORPUS. INDEED,  
 27 A CLAIM CAN BE DEBATABLE EVEN  
 28 THOUGH EVERY JURIST OF REASON MIGHT

1 AGREE AFTER THE COA HAS BEEN GRANTED  
2 AND THE CASE HAS RECEIVED FULL CONSIDERATION  
3 THAT PETITIONER WILL NOT PREVAIL. AS WE  
4 STATED IN SLACK WHERE A DISTRICT COURT  
5 HAS REJECTED THE CONSTITUTIONAL CLAIMS ON  
6 THE MERITS, THE SHOWING REQUIRED TO  
7 SATISFY § 2253 (C) IS STRAIGHT-FORWARD:  
8 THE PETITIONER MUST DEMONSTRATE THAT  
9 REASONABLE JURISTS WOULD FIND THE DISTRICT  
10 COURT'S ASSESSMENT OF THE CONSTITUTIONAL  
11 CLAIMS DEBATEABLE OR WRONG.

12 FOR THE REASONS STATED BELOW, THE  
13 ISSUES ON WHICH PETITIONER SEEKS A  
14 COA ARE AT LEAST DEBATEABLE AMONG  
15 JURISTS OF REASON. HENCE AND EVEN  
16 THOUGH THIS COURT'S DECISION MIGHT ULTIMATELY  
17 BE AFFIRMED ON APPEAL, PETITIONER IS  
18 ENTITLED TO A COA ON THE ISSUES SET  
19 FORTH ABOVE.

20  
21 STATEMENT OF REASONS FOR  
22 ISSUANCE OF COA  
23

24 1.  
25  
26  
27  
28

THE DISTRICT COURT ERRED IN FAILING  
TO GRANT EVIDENTIARY HEARINGS ON  
PETITIONER'S CLAIM OF COUNSEL'S  
FAILURE TO SEEK PITHNESS DISCOVERY

1 FOR THE WITNESS ON WHOM THE ENTIRE  
2 PROSECUTION CASE DEPENDED ON FOR BETTER  
3 THE STANDARDS OF REASONABLY COMPETENT  
4 COUNSEL -  
5

6 NATURE OF CLAIM #

7 IN HABEAS CORPUS PETITION PETITIONER  
8 ALLEGED THAT HIS COUNSEL WAS PERFORMING  
9 BETTER THE STANDARDS OF REASONABLY  
10 COMPETENT COUNSEL IN ATTACHMENT  
11 "A"! A-29# OF PETITIONERS

12 WRIT OF HABEAS CORPUS - IN SUPPORT  
13 OF THIS PETITIONER ALLEGED IN  
14 # A 5-18 STATEMENT OF APPLICABILITY  
15 IN WRIT OF HABEAS CORPUS WHY  
16 AND HOW THIS COUNSEL FAIL BETTER  
17 THE STANDARDS OF REASONABLY COMPETENT  
18 COUNSEL - WHICH DISTRICT COURT  
19 JUDGE COMPLETELY IGNORED IN HIS  
20 OWN REPORT OF RECOMMENDATION PAGES  
21 4-7# AND FAILED TO ADDRESS.

22 THE JUDGE SUMMARY DENIED ALL OF THE  
23 CLAIMS WITHOUT GRANTING A EVIDENTIARY  
24 HEARING -

25 HEREBY PETITIONER MINTAINS THAT THE  
26 JUDGE ERRED BY SUMMARY DENYING THE  
27 FOLLOWING CLAIMS

(CRA  
6 of 15)

1 WHICH WERE RAISED AS TO CLAIM ONE IN  
 2 WRIT OF HABEAS CORPUS - ATTACHMENT  
 3 "A" A - S-18# STATEMENT OF  
 4 APPLICABILITY -  
 5 IN ORDER DENYING PETITION THE JUDGE  
 6 ANNOTIZES TRIAL JUDGE'S "TACTICAL" DECISION  
 7 AND CALLS PETITIONERS REQUEST FOR PITCHES  
 8 MOTION UNSUPPORTED SPECULATION - CALLING  
 9 TRIAL COUNSEL'S REFUSAL OF PITCHES MOTION  
 10 TACTICAL - BUT JUDGE IS NOT NOTICING  
 11 THAT AD THE CLAIMS IN WHICH PETITIONER  
 12 IS SEEKING COA RATE IN ONE WAY OR  
 13 ANOTHER TO TRIAL COUNSEL'S FAILURE TO  
 14 CONDUCT A REASONABLE PRE TRIAL  
 15 INVESTIGATION AS GUARANTEED BY STRICKLAND  
 16 V WASHINGTON 466 US 668 685 104 S.Ct  
 17 2052 80 L.Ed 674 1984.) THIS IN  
 18 LIGHT OF THE OVERWHELMING CONTRADICTORY  
 19 EVIDENCE THAT JUDGE FAILS TO STATE  
 20 IN HIS ORDER DENYING PETITION OF  
 21 HABEAS CORPUS; FURTHERMORE THE  
 22 JUDGE'S RATIONALE FOR SUMMARILY REJECTING  
 23 PETITIONERS CLAIM IS ESSENTIALLY  
 24 THAT PETITIONER HAS NOT OFFERED MORE  
 25 THAN UNSUPPORTED SPECULATION - AND  
 26 CLAIMING THAT TRIAL COUNSEL MADE A  
 27 TACTICAL DECISION AS TO PETITIONERS  
 28 CLAIM THAT HIS TRIAL ATTORNEY WAS

(CoA  
7 of 15)

1 PERFORMING BELOW REASONABLY COMPETENT  
 2 COUNSEL. PETITIONER STILL CLAIMS THAT  
 3 THE DISTRICT COURT ERRED BY FAILING  
 4 TO GRANT PETITION AND EVIDENTIARY  
 5 HEARING ON HIS WRIT OF HABEAS CORPUS  
 6 WHICH RELATED TO TRIAL COUNSEL'S  
 7 DEFICIENT INVESTIGATION INTO HIS "ALLEGED"  
 8 "TACTICAL" DECISION WHICH WOULD NO MORE  
 9 THAN A DESPERATE REASON TO REFUSE  
 10 PITCHLESS MOTION. INCLOSIVELY AS SHOWN  
 11 ON PETITIONER'S WRIT PAGE A-10 -  
 12 WHERE COUNSEL ADMITS THAT HIS OPINION  
 13 THIS "TACTICAL" DECISION WAS NOT NOTHING  
 14 MORE THAN A ASSUMPTION AND HE ALSO  
 15 STATE HE MAY BE WRONG. A ASSUMPTION  
 16 WHICH WAS BASED IN NO PARTICULAR  
 17 KNOWLEDGE OR INVESTIGATION OF THE  
 18 PROSECUTION'S STAR WITNESS -  
 19

20 CLAIM TWO

21 IN HABEAS CORPUS PETITION, PETITIONER  
 22 ALLEGES IN CLAIM TWO - WRIT OF  
 23 HABEAS CORPUS ATTACHMENT "B"  
 24 #B 1 - 41 - PETITIONER ALLEGES THAT  
 25 DISTRICT COURT ERRED AND ACTED CONTRARY  
 26 TO CLEARLY ESTABLISHED FEDERAL LAW  
 27 DECIDED BY THE UNITED STATES COURTS  
 28 WHICH PETITIONER ARTICULATED ON HIS WRIT

(COA  
8 of 15.)

1 PETITIONER ALLEGES THAT ALL THE CLAIMS  
2 RAISED IN SUPPORT OF CLAIM TO OF WRITT  
3 OF HABEAS CORPUS WERE COMPLETELY  
4 DISREGARDED BY DISTRICT JUDGE IN HIS  
5 ORDER OF DENYING PETITION PAGE 7-12  
6 WHERE HE NOT ONCE ADDRESSES THE ISSUES  
7 THAT PETITIONER RAISED TO SUSTAINATE  
8 HIS CLAIM. IN FACT DISTRICT JUDGE NOT  
9 ONES MENTIONED PETITIONERS ARGUMENT  
10 AND PROVIDED RECORD DOCUMENTATION ON  
11 PETITIONERS WRITT OF HABEAS CORPUS  
12 PAGES - B-3<sup>#</sup> AND B 20<sup>#</sup> WHERE  
13 COUNSEL ADMITS TO A CONFLICT YET  
14 THE DISTRICT JUDGE COMPLETELY IGNORES COUNSEL'S  
15 OWN REQUEST THAT ITS TIME TO SWITCH  
16 ATTORNEYS -  
17 THE DISTRICT COURT JUDGE NOT ONES  
18 MENTIONED NOTHING IN REGARDS TO  
19 PETITIONERS CLAIMS AND INSTEAD BASED  
20 HIS DECISION ON ISSUES THAT PETITIONER  
21 DID NOT BRING UP. RATHER THAN THE ISSUES  
22 THAT WERE RAISED IN PETITIONERS WRITT.

23 STATEMENT OF  
24 REASONS FOR ISSUANCE OF COA.

25 THE DISTRICT COURT FAILED IN ERRING  
26 TO GRANT PETITION FOR WRITT OF HABEAS  
27 CORPUS WHEN IT WAS CLEARLY SHOWN

(COA  
90f15.)

1 THAT PETITIONER'S RIGHT TO COUNSEL WAS  
2 VIOLATED WHEN HE WAS FORCED TO CONTINUE TO  
3 GO TO TRIAL WITH A LAWYER WHO HE DID NOT  
4 TRUST AND WHO BECAME SO ENMOTTLED IN  
5 TENSION AND FRICTION THAT THE RELATIONSHIP  
6 BETWEEN CLIENT AND COUNSEL WAS SO IMPAIRED (AS RECORD IN WRITTEN OF HABEAS  
7 CORPUS ATTACHMENT # B-1 B-41 # DEMONSTRATED)  
8 THAT INNFFECTIVE REPRESENTATION WAS  
9 LIKELY TO RESULT.

10  
11 NATURE OF CLAIM 2.

12  
13 IN HABEAS CORPUS PETITION PETITIONER  
14 ALLEGED THAT TRIAL JUDGE ABUSED HIS  
15 DISCRETION IN NOT SUBSTITUTING TRIAL  
16 COUNSEL WHO AS EXPLAINED IN FULL  
17 DETAIL IN ATTACHMENT # B-1-B41 # OF  
18 WRITTEN OF HABEAS CORPUS - PETITIONER  
19 ILLUSTRATES HOW HIS AND COUNSEL'S  
20 RELATIONSHIP HAD BECOME SO IRREVOCABLY  
21 IMPAIRED THAT AS THE RECORD CAPTURED  
22 INNFFECTIVE REPRESENTATION RESULTED.

23 DISTRICT JUDGE NOT ONCE MENTIONED  
24 TRIAL COUNSEL'S OWN VOLUNTEERED ADMSSIONS  
25 OF CONFLICT AND WISHING TO SWITCH  
26 ATTORNEYS AS NOTED IN PAGE B-3 #  
27 OF WRITTEN OF HABEAS CORPUS

1 OR HIS ADMISSION TO THERE BEING A  
2 BREAKDOWN AS STATED IN PETITIONER'S  
3 WRIT OF HABEAS CORPUS PAGE #3 20 -  
4 FURTHER MORE IT IS VERY CLEAR FROM  
5 JUDGES ORDER DENYING PETITION PAGES  
6 7# - 12 THAT DISTRICT JUDGE FAIR IS  
7 TO NOTE THAT TRIAL ATTORNEYS ALLEGED  
8 "TACTICAL" DECISION FOR A DEFENSE WHICH  
9 WAS ONE OF THE MAIN REASONS OF THE  
10 CONFLICT WAS AND CANNOT BE PROTECTED  
11 BY LAW AS IT WAS ONLY DONE AFTER 4  
12 VERY BAD CHOICES REASONS FOR NOT WANTING  
13 TO FILE PETITION MOTION. ALL OF WHICH  
14 WERE HEARD BY JUDGE AND ON THE  
15 RECORD AND WRONGFULLY ALLOWED TO  
16 BE ALLEGED AS A "TACTICAL" CHOICE WHEN  
17 TRIAL ATTORNEY HAS NOT MADE UP MET  
18 THE LEGAL STANDARDS THAT PROTECT HIS  
19 CHOICE AS TACTICAL AS HE DID NO  
20 INVESTIGATION OR PREPARATION TO  
21 SUBSTANTIATE HIS CHOICE WHICH BY HIS  
22 OWN ADMISSION WAS JUST A GUESS -

23 SPECIFICS OF CLAIM 2#

24  
25 FEDERAL CASES HOLD THAT WHEN A  
26 DEFENDANT DEMONSTRATES SUCH A BREAKDOWN  
27 THE TRIAL JUDGE IS REQUIRED TO ORDER A  
28 SUBSTITUTION OF COUNSEL - JACKSON V Y/ST

COA

1 (9th Cir. 1990) 921 F.2d 822 838  
2 THIS IN UNITED STATES V WILLIAMS (9th Cir. 1979)  
3 594 F.2d 1258, 1259-1261 - THE TRIAL COURT  
4 (THE FEDERAL COURTS OF APPEAL HOLD) SHALL  
5 HAVE GRANTED DEFENDANTS REPEATED MOTIONS  
6 FOR SUBSTITUTION OF COUNSEL BECAUSE A STRONG  
7 SHOWING WAS MADE OF THE STATE OF DISMEMBERMENT  
8 BAD RELATIONSHIP AND LACK OF COMMUNICATION  
9 BETWEEN PETITIONER AND HIS ATTORNEY IN  
10 REGARD TO THE PREPARATION OF HIS DEFENSE.  
11 SO THAT DENIAL OF PETITIONERS MOTION  
12 FOR CHANGE OF APPOINTMENT COUNSEL DEPRIVED  
13 HIM OF HIS CONSTITUTIONAL GUARANTEED RIGHT  
14 TO HAVE THE EFFECTIVE ASSISTANCE OF COUNSEL  
15 BEFORE TRIAL AND AT HIS TRIAL  
16 THE TRIAL COURT ERRED IN DENYING  
17 PETITIONERS REQUEST FOR SUBSTITUTION  
18 OF COUNSEL BECAUSE THE JUDGES  
19 FOCUSED HIS DECISION BY FOCUSING ON  
20 COUNSEL'S PAST LEGAL COMPETENCY (SEE  
21 BRIEF PAGE 39.) WHEN THE PROPER  
22 FOCUS OF SUCH INQUIRY WHEN A  
23 INDIGENT DEFENDANT REQUESTS FOR SUBSTITUTION  
24 OF COUNSEL, SHOULD BE ON THE ACTUAL  
25 NATURE AND EXTENT OF THE CURRENT AND  
26 ACTUAL CONFLICT. UNITED STATES V  
27 WALKER SUPRA 915 F.2d AT 493.

28 REBUTAL TO DISTRICT JUDGE ORDER -

(C.A.  
(20f15))

1 , in JUDGE CHARLES R. BREYER ORDER  
 2 TO DENY PETITION FOR A WITNESS OF  
 3 HABEAS CORPUS HE FINDS THAT PETITIONER  
 4 HAS NOT MET HIS CLAIMS. IN CLAIM ONE  
 5 PETITIONERS CONSTITUTIONAL RIGHT TO  
 6 AFFECTIVE ASSISTANCE OF COUNSEL WAS  
 7 VIOLATED BECAUSE IN A CASE WHERE THERE IS  
 8 A OVERPOWERING CONTRADICTION TO THE STATEMENTS  
 9 PROSECUTIONS ONLY WITNESS WHICH ATTEMPTS  
 10 TO CONNECT PETITIONER TO THE ACCUSED CRIME  
 11 AND WHERE HIS CREDIBILITY CAN BE  
 12 CHALLENGED THROUGH A PITCHES MOTION  
 13 WHICH TRIAL ATTORNEY DENIED FOR NUMEROUS  
 14 OF REASONS WHICH INCLUDE ALL CAPTIONED  
 15 RECORD THAT DEMONSTRATE THAT TRIAL  
 16 ATTORNEY WAS PERFORMING BELOW THE  
 17 STANDARDS OF COMPETENT ATTORNEY AND  
 18 WHEN IT IS SUBSTANTIATED. WHEN HE  
 19 ATTEMPTS TO SHIELD HIS INCOMPETENCE  
 20 WITH A ASSUMPTIVE GUESS WHICH WAS  
 21 NOT REACHED THROUGH ANY INVESTIGATIVE  
 22 RESEARCH DISTRICT JUDGE ERRED.  
 23 SECONDLY IN SECOND CLAIM  
 24 PETITIONERS CONSTITUTIONAL RIGHTS  
 25 WERE ALSO VIOLATED AS THROUGH  
 26 VARIOUS EXAMINES PROVIDED BY PETITIONER  
 27 IN WRITTEN OF HABEAS CORPUS PETITIONER  
 28 HAS CLEARLY DEMONSTRATED HOW

CJA

13 of 15

1 HAD TRIAL JUDGE SUBSTITUTED COUNSEL  
 2 WHICH IT WAS REQUESTED NUMEROUS TIMES  
 3 HOW PERHAPS PETITIONER'S ODDS WITH THE JURY  
 4 WOULD HAVE BEEN MUCH MORE FAVORABLE.

### SUMMARY

6 AS HE WAS IN TOTTEN V MERKLE 137 F.3d  
 7 1172, 1176 (CAIRN 1998) "IN HABEAS CORPUS  
 8 PROCEEDINGS AN EVIDENTIARY HEARING IS REQUIRED  
 9 WHEN THE PETITIONER'S ALLEGATIONS IF PROVEN  
 10 WOULD ESTABLISH THE RIGHT TO RELIEF." ID. AT  
 11 1176. THAT IS THE SITUATION HERE

12 PETITIONER HAS ALLEGED FACTS CAPTURED ON  
 13 RECORD ON BOTH HIS CLAIMS WHICH IF TRUE  
 14 ESTABLISH A BASIS FOR RELIEF AS PETITIONER'S  
 15 CLAIMS THAT ① COUNSEL'S FAILURE TO SEEK  
 16 PITCHER'S MOTION DISCOVERY FOR THE WITNESS  
 17 ON WHICH THE ENTIRE PROSECUTION'S CASE  
 18 DEPENDED IS A VIOLATION OF PETITIONER'S  
 19 6TH AMENDMENT RIGHT TO AFFECTIVE  
 20 ASSISTANCE OF COUNSEL AS TRIAL ATTORNEY  
 21 FAILED AND WAS ACTING BELOW THE STANDARDS  
 22 OF REASONABLY COMPETENT COUNSEL

23 CLAIM ② DERIVED OF PETITIONER'S  
 24 MARSHON NOTIONS THAT AN ABUSE OF  
 25 DISCRETION BECAUSE COUNSEL WAS  
 26 PERFORMING BELOW THE STANDARDS OF  
 27 REASONABLY COUNSEL AND BECAUSE THE

(CWA  
190f18)

1 RELATIONSHIP BETWEEN CLIENT AND COUNSEL WAS  
2 SO IRREVOCABLY IMPAIRED THAT INEFFECTIVE  
3 REPRESENTATION WAS LIKELY TO RESULT.  
4 THIS THE DISTRICT COURT JUDGE ERRED  
5 IN SUMMARY REJECTING PETITIONERS WRIT OF  
6 HABEAS CORPUS AND PETITIONERS CLAIMS  
7 IN LIEU OF GRANTING AT LEAST AN  
8 EVIDENTIARY HEARING ON IT - AND GRANT PETITION

9 CONCLUSION

10  
11  
12 THE ISSUES DISCUSSED THAT ARE AT  
13 THE VERY LEAST DEBATABLE AMONG JURISTS  
14 OF REASON. Hence IT IS RESPECTFULLY  
15 REQUESTED THAT THIS COURT GRANT A  
16 CERTIFICATE OF APPEALABILITY ON THE  
17 ISSUES IDENTIFIED AT THE OUTSET OF THIS  
18 APPLICATION.

19

20 DATE 7/16/08

21

22

23

24

25

26

27

28

RESPECTFULLY  
SUBMITTED.



PETITIONER

FELIPE ROCHA #94573  
IN PRO SE.

(CJA  
180f18)

## **PROOF OF SERVICE BY MAIL**

(C.C.P. Section 101a #2105.5, 20 U.S.C. 1746)

*11-9933*  
I, FELIPE ROCHA, am a resident of Pelican Bay State Prison, in the County of Del Norte, State of California. I am over eighteen (18) years of age and am a party to the below named action.

My Address is: P.O. Box 7500, Crescent City, CA 95531.

On the 16<sup>th</sup> day of July, in the year of 2008, I served the following documents: (set forth the exact title of documents served)

- documents: (set forth the exact title of documents served)

  - (1) PRISONERS APPLICATION TO PROCEED IN FORMA PAUPERS.
  - (2) CERTIFICATE OF FUNDS IN PRISONERS ACCOUNT
  - (3) NOTICE OF APPEAL. ORIGINAL 2 PAGES  
PENITENTIARY'S APPLICATION FOR CERTIFICATE OF APPEALABILITY  
(15 PAGES.) 1 ORIGINAL COURT 1 COPY FOR  
ATTORNEY GENERAL AND  
THE ATTORNEY GENERAL'S CLERK -

on the party(s) listed below by placing a true copy(s) of said document, enclosed in a sealed envelope(s) with postage thereon fully paid, in the United States mail, in a deposit box so provided at Pelican Bay State Prison, Crescent City, CA 95531 and addressed as follows:

UNITED STATES DISTRICT  
COURT FOR THE NORTHERN  
DISTRICT  
U.S. COURT HOUSE  
450 GOLDEN GATE AVENUE  
SAN FRANCISCO CAL  
94102-3483

ATTORNEY GENERAL (CAL.)  
SAN FRANCISCO OFFICE  
455 GOLDEN GATE AVE 11000  
SAN FRANCISCO CAL  
94102-3664

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 16<sup>th</sup> day of JULY, 2008.

Signed: *Jey*   
(Declarant Signature)